FILE COPY

Office-Supreme Court, U.S.
FILED
OCT 20 1969
JOHN F. DAVIS, CLERK

No. 135

In the

Supreme Court of the United States

OCTOBER TERM, 1969

FREDERICK WALZ,
Appellant,

v.

TAX COMMISSION OF THE CITY OF NEW YORK,
Appellee.

Appeal from the Court of Appeals of the State of New York

BRIEF OF THE BAPTIST GENERAL CONVENTION OF TEXAS AS AMICUS CURIAE

ROY L. COLE,
1511 Fidelity Union Life Building,
Dallas, Texas 75201.

THE WARLICK PRESS DIVISION, STECK-WARLICK CO.
P. O. BOX 10545 — 1458 ROUND TABLE DRIVE — DALLAS — ME 1-3130

INDEX

Nature of the Case 1
Interest of the Amicus Curiae 2
Sociological Argument Charts 11, 12
Legal Argument 12
Conclusion 16

Table of Authorities

Abington School District v. Schempp
374 U.S. 203, 10 L. Ed. 2d 844 ..... 13, 15
Carmichael v. Southern Coal & Coke Co.
301 U.S. 495, 81 L. Ed. 1245 14
Engel v. Vitale, 370 U.S. 421, 8 L. Ed. 601 13
Eversen v. Board of Education
330 U.S. 1, 91 L. Ed. 711 16
McGowan v. Maryland, 366 U.S.
420, 6 L. Ed. 2d 393 14

No. 135

In the

Supreme Court of the United States

OCTOBER TERM, 1969

FREDERICK WALZ,

Appellant,

v.

TAX COMMISSION OF THE CITY OF NEW YORK,

Appellee.

Appeal from the Court of Appeals of the State of New York

BRIEF OF THE BAPTIST GENERAL CONVENTION OF TEXAS AS AMICUS CURIAE

NATURE OF THE CASE

The appellant seeks to have declared unconstitutional, as a violation of the First and Fourteenth amendments of the United States Constitution, a statute of the State of New York exempting from ad valorem taxation real property of churches owned and used solely for religious purposes.

INTEREST OF THE AMICUS CURIAE

A ruling by this court in favor of the appellant herein would have an astonishingly adverse effect upon the ability of this amicus curiae to carry on its educational, eleemosynary and charitable programs benefiting the public at large. These programs are extensive — for example, colleges and universities operated by this amicus curiae have an enrollment of over 15,000 students.

The Baptist General Convention of Texas is an association of churches whose members profess belief in the principles of the Southern Baptist denomination, the largest religious denomination in Texas, with 1968 membership of 1,842,333. These persons are embraced in 3,936 churches, which are completely autonomous but associate themselves as The Baptist General Convention of Texas for the accomplishment of missionary, educational, eleemosynary and charitable purposes which are beyond the resources of individual churches. Of course, the individual churches engage in their own charitable activities, in many cases embracing day-care for children, personal counseling, aid to the poor and underprivileged, study and recreational programs for young people and many other activities benefiting their communities at large.

The Southern Baptist churches of Texas, acting through The Baptist General Convention of Texas, own, support and (through various non-profit corporations the governing boards of which are elected by the Convention) operate the following institutions, all of them (with the sole exception

of Southwestern Baptist Theological Seminary, which provides post-graduate training for ministers) open to and serving people of all faiths and of no faith:

Colleges and Universities

Baylor University
Baylor College of Dentistry
Baylor School of Nursing
Dallas Baptist College
East Texas Baptist College
Hardin-Simmons University
Houston Baptist College
Howard Payne College
Mary Hardin-Baylor College
Southwestern Baptist Theological Seminary
University of Corpus Christi
Wayland Baptist College

Hospitals

Baptist Hospital of Southeast Texas
Baptist Memorial Hospital
Baptist Memorials Geriatric Hospital
Baylor University Hospital
Hendrick Memorial Hospital
Hillcrest Memorial Hospital
Memorial Baptist Hospital Systems
Valley Baptist Hospital

Orphanages

Buckner Baptist Boys' Ranch
Buckner Baptist Children's Home, Lubbock
Buckner Orphans Home
Mexican Baptist Children's Home
South Texas Children's Home
Texas Baptist Children's Home

Miscellaneous

San Marcos Baptist Academy
Buckner Baptist Maternity Home, Dallas
Buckner Baptist Maternity Home, San Antonio
Buckner Trew-Ryburn Complex for the Aging
Buckner Baptist Haven for the Aging
Buckner Child Care Service
Buckner Marriage and Family Counseling Center

The services of the individual churches to their communities are supported almost solely by voluntary contributions of the church members to the church budget. The institutional activities of the Convention are, of course, supported in part by tuition and service charges to those able to pay and by direct gifts from individuals and corporations. However, they are also strongly supported by grants from the Convention, which receives the money for these grants from the voluntary contributions of its member churches to the Convention's "Cooperative Program."

It is the intention of this brief to show statistically that the subjection to ad valorem taxation of church properties owned and used exclusively for religious purposes would inevitably cause such a serious decline in church contributions to the Convention's cooperative program as to result in the closing of the smaller institutions and serious curtailment in the activities of the larger ones, or their transfer to governmental control and consequent demands upon the taxpayers in general.

SOCIOLOGICAL ARGUMENT

All of the states exempt from ad valorem taxation the real property of churches owned and used exclusively for re-

ligious purposes, together with religious and secular hospitals, educational institutions and other institutions of eleemosynary purpose. Through its laws, the reports of its committees, and the official and private statements of its members, the Congress of the United States has without exception supported and affirmed the desirability of promoting private charity and philanthropy. Support of non-government educational and charitable efforts has been repeatedly affirmed by all the courts of this nation having occasion to consider the matter. This amicus curiae believes that it may assume that the charitable activities of its individual churches and its institutional eleemosynary and educational activities above detailed would be considered by the vast majority of the American people to be desirable and beneficial to the public as a whole.

We have referred to the amazing adverse effect that a ruling in favor of the appellant herein would have upon the ability of this amicus curiae to carry on its programs. Following this division of our brief is a chart showing the effect of subjection of their properties (owned and used exclusively for religious purposes) to ad valorem taxation on the twenty-five largest Southern Baptist churches in Texas and on a representative cross-section of smaller churches in one large city and a number of small towns widely distributed over the entire state. The key figures in analyzing this chart (which deals with the year 1968) are the amount of ad valorem tax to which each church would be subject, (1) considered as a percentage increase in the church budget and (2) com-

pared in dollar value with the gifts of that church to the cooperative program which supports the institutional activities of the Convention.

As a typical example from the chart, The First Baptist Church of San Antonio, Texas, if subjected to ad valorem taxation on its exclusively religious realty, would pay a tax of $57,220.00. Its 1968 annual budget (which corresponds with the contributions of its members) was $558,886.00. Of this amount, the church contributed $52,050.00 to the Convention's Cooperative Program. The church's annual costs for salaries, maintenance and all other expenses are, of course, constantly increasing. Its debt service requirements cannot be reduced. Indeed, practically the only way its members have of alleviating their rising burden of expenses is to reduce or eliminate their church's contributions to the Cooperative Program upon which Baptist institutional activities depend. Note that, without inflationary factors being considered, the subjection of its property to taxation would increase the church's budget by more than ten per cent, and in dollar amount substantially more than the entire contribution to the Cooperative Program. In a situation like this, it is hardly reasonable to suppose that the church members, themselves from all walks of life and burdened with their own problems of increased costs, would not feel it incumbent upon them substantially to reduce the provisions in the church budget for the Cooperative Program.

Certainly no reflection on the particular church is meant — all church members everywhere will of necessity have the

same concerns — the San Antonio church simply has a typical situation. Many churches would be in even worse shape — for example, The Rosen Heights Baptist Church of Fort Worth would have a budget increase caused by taxes of fifteen per cent, and the dollar amount of the taxes would be more than three times the amount of the church's total contribution to the 1968 Cooperative Program.

The totals for the twenty-five largest churches (which together accounted for almost 15% of the total 1968 Cooperative Program) indicate that 14.9% of their total budget was given to support Baptist educational, charitable and religious activities. Their taxes would amount to almost 12% of their budgets. The chart for the representative smaller Dallas churches shows that the tax would be slightly in excess of 10% of the total church budget, and would exceed the entire amount of their annual contribution to the Cooperative Program. For the churches in smaller population centers the tax would be slightly under 10% of the total budget and 44.37% of contributions to the Cooperative Program. Churches simply cannot increase their budgets by 10% and more (in addition to increases necessarily caused by rising costs, salaries and expansion and maintenance programs) — something has to give. The only possible place for reductions is in the eleemosynary and charitable activities of the churches which benefit the community as a whole.

There are, of course, many churches located in small towns and unincorporated areas. Effective tax rates would not be so high as in the city, but these churches are almost all three hundred members or less. These small churches, though numbering 2,374 out of a total of 3,936, contribute only 6.27% of the total Cooperative Program. Churches having five hundred members or less comprise 73% of the total churches, but contribute only 19.1% of the total Cooperative Program. The larger the church, the greater the support of the institutional program. The forty-five churches with more than 3,000 members contribute 21% of the total Cooperative Program contributions and these churches are, of course, in the large population centers with the highest effective tax rates. As a percentage of budget, churches with 3,000 or more members contribute 16.7% to the Cooperative Program, churches with 300 to 3,000 members average 12% of total budget, and churches under 300 members (the majority of the churches) contribute only 6.56% of their budget.

The total value of the real property of Southern Baptist churches in Texas owned and used exclusively for religious purposes is $553,000,000. According to United States Government figures, as quoted in the Texas Almanac for 1968, eight out of ten Texans live in metropolitan areas. A conservative estimate of an overall effective tax rate for this 80% is 2.10% of actual value. A conservative estimate for the re-

maining 20% is 1.25% of actual value. Applying these assumptions to total, the ad valorem tax for all Baptist churches in Texas would amount to $10,669,000, or over 81.5% of the total contributions of all churches to the 1968 Cooperative Program. It is obvious that the subjection of church properties to such taxes would necessarily result in tremendous decreases in Cooperative Program gifts. Our institutions, which, as mentioned, serve people of all faiths and of no faith, simply cannot stand such decreased support. The economic plight of non-government colleges and universities has been related and documented in hundreds or thousands of articles in the last few years. We can say that, in the case of our institutions, none of these articles have overstated the case. And our institutions other than colleges and universities are similarly always pressed for funds.

Our predictions of severe curtailment of institutional activities by reason of a subjection of church property to ad valorem taxation is supported not only by logic and the self-evident nature of the proposition, but also by extensive discussions with pastors and church members throughout the state.

At this point, we might mention that the figures given in our charts are highly conservative. In Texas, governmental agencies levying ad valorem taxes include the state, the county, the city, the school district, junior college dis-

tricts, hospital districts, flood control districts, road improvement districts, and a number of others. These districts set a dollars and cents rate based on a certain percentage of valuation. However, in practically all instances the percentage at which the taxing authority says it values property is not the same as the percentage at which it actually does value property, and in practically all of these cases the authority actually values property at less than it says. For example, a typical independent school district tax rate is $1.80 per $100.00 of value on (according to the district) 55% of value. Actually that district is more likely to be applying the tax rate to only 47.3% of value. A table of claimed and actual assessment ratios for each county, city and school district in Texas is prepared annually under the auspices of The Texas Tax Commissioners Association, The Utility Tax Commission of Texas and The Industrial Ad Valorem Tax Conference. In our chart we have used the actual, as opposed to the announced, assessment ratios. Further, we have made no projections on an increase to be expected in tax rates and valuation percentages, although it is a matter of record that ad valorem taxes are being steadily and substantially increased. Finally, we have probably overlooked an occasional hospital, mosquito control, or levee improvement district.

Twenty-five (25) Largest Southern Baptist Churches in Texas

Church	Value of Property	Church Budget	Gifts to Cooperative Program	Effective Tax Rate	Tax
First, Dallas	$ 7,750,000	$ 2,220,000	$ 217,000	2.05%	$ 158,875
First, Amarillo	3,117,000	966,600	219,000	2.00	62,340
First, Lubbock	3,600,000	681,900	115,000	1.78	64,080
First, San Antonio	2,860,000	558,900	52,100	2.70	57,220
First, Beaumont	2,285,000	545,500	77,400	2.35	78,975
Cliff Temple, Dallas	1,871,000	698,200	97,700	2.05	38,355
First, Wichita Falls	3,700,000	637,000	95,000	2.00	74,140
Travis Ave., Ft. Worth	3,540,000	507,300	54,700	2.20	77,800
So. Main, Houston	968,000	264,800	47,400	2.08	20,435
First, Midland	3,182,000	635,100	130,400	2.01	63,600
Broadway, Ft. Worth	3,187,000	637,100	87,800	2.20	70,114
Columbus, Waco	1,670,000	386,300	68,300	2.03	33,900
Second, Houston	3,875,000	592,800	34,700	2.08	80,600
First, Abilene	2,950,000	546,200	77,000	1.93	56,900
First, El Paso	1,850,000	323,600	64,500	2.22	41,070
First, Arlington	2,780,000	455,600	52,500	2.20	61,200
Park Cities, Dallas	4,600,000	986,000	137,500	2.05	94,300
Gaston, Dallas	2,160,000	404,000	50,200	2.05	44,280
Sagamore Hill, Ft. Worth	1,500,000	423,200	32,800	2.20	33,000
Hyde Park, Austin	1,753,000	364,500	23,100	2.06	36,100
Rosen Heights, Ft. Worth	1,730,000	260,700	12,200	2.20	38,100
First, Tyler	2,230,000	461,000	74,000	2.08	46,400
Trinity, San Antonio	2,920,000	446,600	35,900	2.70	79,000
First, Houston	1,830,000	409,000	33,500	2.08	38,100
Grace Temple, Dallas	1,310,000	313,400	6,500	2.06	26,000
Totals	$69,218,000	$12,728,810	$1,896,200		$1,474,884

Representative Big City (Dallas) Churches, 500 to 1500 Members

Church	Value of Property	Church Budget	Gifts to Cooperative Program	Effective Tax Rate	Tax
Royal Lane	$ 750,000	$ 95,000	$ 7,200	2.05%	$15,400
Royal Oaks	175,000	30,400	900	2.05	3,600
Lake Highlands	810,000	190,000	16,000	2.05	16,400
Pleasant Mound	171,000	51,200	5,500	2.05	3,500
Valwood Park	310,000	85,100	8,900	2.05	6,400
Total	$2,216,000	$451,700	$39,100		$45,300

Representative Churches in Smaller Population Centers, 500 to 1500 Members

Church	Value of Property	Church Budget	Gifts to Cooperative Program	Effective Tax Rate	Tax
First, Paris	$ 861,900	$ 226,800	$ 40,500	2.02%	$ 17,400
First, Athens	798,500	120,800	16,800	1.27	10,100
First, Marlin	272,000	78,900	8,300	1.21	3,500
First, Columbus	275,000	45,300	7,400	1.35	3,700
First, McAllen	939,000	168,500	5,300	2.08	19,500
First, Kerrville	500,000	102,000	12,300	1.91	9,500
First, Childress	355,000	93,500	24,600	1.09	3,900
First, Pecos	550,000	120,100	5,800	2.15	11,800
First, Brownfield	990,000	163,244	29,000	1.79	17,700
First, Brownwood	887,000	145,200	21,700	1.45	12,900
Total	$6,428,400	$1,050,700	$246,400		$109,000

LEGAL ARGUMENT

This amicus curiae respectfully takes the position that this case should be governed by *Murdock v. Pennsylvania*, 319 U.S. 105, 87 L. Ed. 1292 (opinion by Mr. Justice Douglas), in which a license fee on persons distributing religious literature was declared unconstitutional as prohibiting the free exercise of religion. The principles there stated should apply at least to property owned and used exclusively for religious purposes. We urge that position upon the

court, feeling that such an interpretation would not involve "an establishment of religion" but would instead be an assurance that the free exercise of religion would not be impaired or restrained.

However, the precise question actually before the court is not whether the United States Constitution prohibits a state from taxing exclusively religious property, but whether a state may, for reasons of public policy and the promotion of the public good, exempt exclusively religious realty, as it exempts the property of many secular organizations.

Every case finding a constitutional violation of the "establishment clause" or the "free exercise clause" has involved a state law where no possible reason for the statute other than governmental support of religion could be found. See *Engel v. Vitale*, 370 U.S. 421, 8 L. Ed. 2d 601 (the "required school prayer" case).

In the latest decision of this court bearing upon the matter, *Abington School District v. Schempp*, 374 U.S. 203, 10 L. Ed. 2d 844 (holding unconstitutional a school requirement for the reading of Bible verses and the recitation of the Lord's Prayer), Mr. Justice Brennan, concurring, pointed out:

> "Nothing we hold today questions the propriety of certain tax deductions or exemptions which incidentally benefit churches and religious institutions, along with many secular charities and nonprofit organizations. If religious institutions benefit, it is in spite of rather than because of their religious character. For religious institutions simply share benefits which government makes generally available to educational, charitable and eleemosynary groups. There is no indication that taxing authorities have used such benefits in any way to subsidize worship or foster belief in God. And as among

> religious beneficiaries, the tax exemption or deduction can be truly nondiscriminatory, available on equal terms to small as well as large religious bodies, to popular and unpopular sects, and to those organizations which reject as well as those which accept a belief in God." 374 U.S. 203, 301-2.

In the much-cited case of *Carmichael v. Southern Coal & Coke Company*, 301 U.S. 495, 81 L. Ed. 1245 (upholding the imposition of a state unemployment tax on employers), this court reiterated the long-standing principle that freedom to select subjects of taxation and to grant exemptions is inherent in the exercise of the power to tax, and that inequalities resulting from the singling out of one particular class for taxation or exemption infringe no constitutional limitation. Again, the same case points out that where the public interest is served, even one business may be left untaxed and another taxed. To the same effect is the recent case of *McGowan v. Maryland*, 366 U.S. 420, 6 L. Ed. 2d 393 (upholding a Sunday closing law with myriad exemptions, as advancing the welfare of the public, in spite of its religious origin). As said by Mr. Chief Justice Warren in the opinion of the court, "* * * a statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." 366 U.S. 420, 426. This quotation, particularly taken in the context of the varied exemptions from the Sunday law involved, is especially appropriate in the case before this court. Surely a state is entitled to believe that places of religious worship, with their strong support of community charity and eleemosynary functions and state-wide hospitals, colleges, universities, orphanages and other institutions serving the public as a whole, are

entitled to exemptions from taxation for the good of the public as a whole.

The above proposition is reinforced by the observation of Mr. Justice Goldberg, concurring in *Abington School District v. Schempp*, as follows:

> "The fullest realization of true religious liberty requires that government neither engage in nor compel religious practices, that it effect no favoritism among sects or between religion and nonreligion, and that it work deterrence of no religious belief. But devotion even to these simply stated objectives presents no easy course, for the unavoidable accommodations necessary to achieve the maximum enjoyment of each and all of them are often difficult of discernment. There is for me no simple and clear measure which by precise application can readily and invariably demark the permissible from the impermissible.
>
> "It is said, and I agree, that the attitude of government toward religion must be one of neutrality. But untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it.
>
> "Neither government nor this Court can or should ignore the significance of the fact that a vast portion of our people believe in and worship God and that many of our legal, political and personal values derive historically from religious teachings. Government must inevitably take cognizance of the existence of religion, and, indeed, under certain circumstances the First Amendment may require that it do so." 374 U.S. 203, 305-6.

Also significant is the decision of this court in *Eversen v. Board of Education*, 330 U.S. 1, 91 L. Ed. 711 (permitting state reimbursement for amounts expended in busing students to parochial schools), in which Mr. Justice Black stated for the court that the First and Fourteenth Amendments cannot be used to prevent a state "from extending its general state law benefits to all its citizens without regard to their religious belief." 330 U.S. 1, 16.

The elected representatives of the people of the 50 states surely cannot all be mistaken in their expressed belief that exemption of property owned and used exclusively for religious purposes redounds to the public benefit.

CONCLUSION

The appeal of Frederick Walz should be denied, and the judgment of the Court of Appeals of the State of New York should be affirmed.

Respectfully submitted.

ROY L. COLE,
Attorney for Amicus Curiae.

October 13, 1969